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August 17, 2015

Peter Walker, Esq.
Federal Community Defender Office
Suite 545 West – The Curtis Center
601 Walnut Street
Philadelphia, PA 19106

RE: **Neuropsychological Examination of Richard Tabler: Preliminary Findings**

Dear Mr. Walker,

I am writing to share the findings and opinions from my examination of Mr. Tabler at your request.

Reason for Referral

1) Please provide an opinion regarding any aspects or impairments of Mr. Tabler's neurocognitive functioning.

Scope of Examination and Informed Consent

Mr. Tabler was examined and tested in a quiet, semi-private meeting room at the Texas Department of Corrections Polunsky Unit on July 6, 2015, for a total of approximately six hours.

He was advised that I have been retained by the Federal Community Defender's Office, and of the limits on his confidentiality in this forensic context. He was also advised that I might be asked to prepare a report and/or come to Court to testify about him.

Finally I explained to him that I was not there to treat him for any problems that he might be having. He consented to participate in the examination with this understanding.

Materials Reviewed

I have reviewed 13 volumes of background materials in this case. The complete list is appended at the end of this report, but can be summarized to include: trial transcripts; post-conviction transcripts; medical records; mental health records; school records; California and Texas Department of Corrections records; Florida Probation records; Lee County records; the report of Kit W. Harrison, Ph.D., 7/28/2008; the report of Kit W. Harrison, Ph.D., 9/5/2008; the report of Roger D. Saunders, Ph.D., 6/20/2011; the report of Philip S. Trompetter, Ph.D., 1/16/2011; the files of Attorney Kevin Nash; and Mr. Tabler's writings and communications.

In addition, I have reviewed an additional volume of records and neuropsychological test data from Daneen Milam, Ph.D.; an affidavit from Meyer Proler, M.D., and a social history for Mr. Tabler compiled by Coleen Francis.

Tests and Procedures Administered

Structured Neuropsychological Interview

Rey 15 Item Memory Test

Validity Indicator Profile

Wechsler Adult Intelligence Scale – IV

Wechsler Memory Scale – IV

California Verbal Learning Test – II

Wide Range Achievement Test - IV

Copy Cross & Cube

Hooper Visual Organization Test

Luria's Tests of Graphomotor Sequencing and Inhibition

Tests of Motor Sequencing and Control

Finger Tapping Test

Grooved Pegboard Test

Tests of Verbal Fluency (F-A-S)

Animal Naming Test

Boston Naming Test

Speech-Sounds Perception Test

Seashore Rhythm Test

Wisconsin Card Sort

Stroop Test

Halstead Category Test

Trail Making Test, Parts A & B

Background information

History of head injury. Mr. Tabler reported a number of closed head injuries involving alterations of consciousness, including:

(1) an episode in childhood (13 years old) during which he fell from a tree while playing with friends;

(2) a motor vehicle accident in which he states he lost his teeth; and

(3) an incident in Vancouver, WA in 2004 during which he was hit with "brass knuckles" during a carjacking and had subsequent memory problems.

He also reported a bicycle accident when he a child and he hit a curb, cutting his chin open. He denied any loss of consciousness during this incident.

California DOC medical records from August 20, 2000 to reflect a history of motor vehicle accident with head injury including a shattered jaw. This is presumably a reference to the accident in which he lost his teeth, although he reported a much shorter period of unconsciousness during the present examination.

His medical records also reflect the "carjacking" incident:

> Date of Service: 09/15/2004
> Primary Care Physician: None.
> Chief Complaint: Facial trauma, altered mental status.
> History of Present Illness: This is a 25-year-old male who states that he was car-jacked and assaulted four days prior to arrival. He was seen at Adventist Hospital and had plain films done. He was diagnosed with a left zygoma tripod fracture. Referred to OHSU Oral Maxillofacial Surgery.
>
> He had an appointment at 1 o'clock today, however, he states that when he was driving to his appointment, he ended up at his church, was acting inappropriately, somewhat confused. Therefore, paramedics were called and he was brought in for evaluation of his altered mental status. The patient is complaining of severe headaches. He states that he has been unable to eat secondary to his jaw pain. He was feeling nauseated and had one episode of vomiting. He denies any change in his vision. He is alert, oriented to self. He thinks that it is August as opposed to September, but otherwise knows the year, knows who the president is and gives details regarding his family members, phone numbers, etc.
>
> The patient states that he was given prescriptions for Vicodin and amoxicillin, however, he has lost them. He states the pain is so bad he has been unable to sleep. He feels he is having memory loss. He states that his head feels foggy and he is here for further evaluation. He denies other recent illnesses. He denies any fevers or chills. He denies any focal deficits. He has some left chin numbness but otherwise is complaining primarily of generalized head pain and face pain. [Bates 003393]
>
> ED Course: Urine drug screen came back entirely negative. Patient was reevaluated repeatedly and has appeared to clear clinically. He is now alert and oriented times four. The CBG is normal as noted in previous dictation. As he is now no longer altered, we feel he is stable for discharge to home under the care of himself. However, our social worker has notified family and friends in the area. Patient will be looked in on by his landlord. Patient is to follow-up with OMFS clinic next week.

> He will be given a prescription for 10 days of Pen VK, as well as Vicodin. Follow-up as noted above. Return should he have any further difficulties, increasing pain, change in vision, nausea, vomiting, levers, or other concerns. Condition on discharge is stable and improved.
>
> Clinical Impression:
> 1. Closed head injury with concussion.
> 2. Facial fractures. [Bates 003402]

Past neuropsychological testing. Mr. Tabler has undergone neuropsychological testing at two times in the past. The first was by Dr. Milam on 12/08/2006; and the second was by Dr. Harrison on 06/27/2008.

The interested reader is directed to Dr. Harrison's 09/05/2008 report for a detailed analysis of his findings. However, it appears that Dr. Milam did not prepare a report, although her raw test data are available for review. The main findings from both doctors are summarized briefly below.

Dr. Milam's data. Dr. Milam administered a battery of neuro-psychological tests to Mr. Tabler, and found evidence of:

a. Attention Deficit Hyperactivity Disorder;

b. a 33-point difference between his Verbal and Performance IQ scores on the Reynolds Intellectual Assessment Scales (RAIS); with a characteristic pattern of Performance IQ greater than Verbal IQ;

c. language problems on the Aphasia Screening Test;

d. a Learning Disability for math; and

e. motor slowing and weakness in the upper extremities.

His remaining test findings were within normal limits.

Dr. Harrison's findings. Dr. Harrison also administered a battery of neuropsychological and psychodiagnostic tests to Mr. Tabler on 09/05/2008, two years after Dr. Milam.

He found no evidence of poor effort or malingering on specialized tests designed for that purpose, hence the data are valid and reliable for interpretation.

Many of Mr. Tabler's test results were within normal limits, however, as was the case with Dr. Milam's assessment, a pattern characterized predominantly by language and executive function (frontal lobe) deficits was observed, including:

a. Frontal Lobe underarousal;

b. Lack of organization for effective verbal recall (lack of frontal consolidation and "chunking");

c. Speech patterns that were, "pressured, tangential, and impulsive;"

d. Impairment in "visual-motor integrative functioning … where speed is critical … due to trouble with processing speed, consistent with other measures;" and

e. "… he consistently perseverated a method from one reproduction into the other, indicating some moderate degree or cognitive slippage. Poor motor planning and use of space, coupled with an impulsive style, degraded his work product tremendously."

Psychodiagnostic testing with the MCMI-III revealed a valid profile, reflecting, "at least a moderate level of pathology." Dr. Harrison arrived at several diagnoses, including:

- Bipolar Disorder, Type 1, Most Recent Episode Mixed, Severe, With Psychotic Features
- R/O intermittent Explosive Disorder
- Attention-Deficit Hyperactivity Disorder, Combined Type (By History)
- Polysubstance Dependence, (In Controlled Environment)
- Cognitive Disorder Not Otherwise Specified, (Post- Concussional)
- Adjustment Disorder with Anxiety

- Borderline Personality Disorder
- Antisocial Personality Disorder
- Schizoid Features
- Self-Mutilation, Serial Traumatic Brain Injuries, Tremor, Peripheral Neuropathy-Self-inflicted Wounds

Examination Findings

Behavioral Observations and Mental Status Examination

Richard Lee Tabler is a 36-year-old man who looks significantly younger than his stated age. He is thin and tall, with long fingers and a noticeable lack of facial hair. In addition, he is missing all of his upper front teeth which he stated were "pulled" following a traffic accident.

He has many dozens of prominent scars from cuts on both side of both of his arms, greater on the left than on the right. The scars are evident on his hands as well. He has visible tattoos on both arms, and on the fingers of his left hand.

He presented for testing with short brown hair, wearing white prison issued fatigues over a white T-shirt. He was well oriented to the world around him, knowing who he was, where he was, and the correct date and approximate time. His attitude was cooperative and effortful throughout a full day of examination and testing.

A mild, bilateral (right greater-than left) motor tremor was observed in his upper extremities.

His speech was produced at a rapid rate, with articulation that was garbled at times secondary to his missing teeth and pressured speech; and with an increased quantity of verbal output. His thoughts were expressed in a coherent and logical fashion, but with perseverative, tangential, and circumstantial thinking that impaired the goal-directedness of his thoughts.

There was no evidence of fixed false beliefs (delusions) or unusual sensory experiences (i.e., visual, auditory, somatosensory, gustatory, or olfactory hallucinations). He did describe a "sixth sense" regarding danger or trouble in his immediate environment.

Emotionally his observable affect was ebullient and labile, at times elated, and broad in range and intensity. He had excessive amounts of energy and would laugh in a high-pitched voice at inappropriate times throughout the examination, often attempting to get the attention of a corrections officer stationed outside the room (observing through a plate glass window). His underlying mood was inferred to be euphoric and elated. Insight and judgment were poor.

He described his appetite as "up-and-down" stating that he has lost approximately 20 pounds because he is "tired of prison food." He stated he has dropped from a high of 200 pounds to 180 pounds currently. When asked about his sleep he replied, "not good." He reported that he tosses and turns secondary to stress and depression, and has difficulty falling to sleep. He denied any changes in libido.

When asked about his social relationships he stated, "I'm a people person," but said that his history of using a cell phone from inside the prison has caused him significant interpersonal problems with the corrections staff and other inmates.

Emotionally he stated that he has been "up-and-down," due to not being allowed visitors, and having corrections staff reading his mail. He stated that this is been extremely stressful for him. He denied any changes in his thinking or memory, reporting, "my memory is good." He also denied any problems with speech, language, or motor functioning.

Neuropsychological Testing

Data validity. In any forensic examination, it is critical to evaluate the degree of effort being put forth by the patient, and to rule-out intentional malingering as an explanation for the test findings. For this reason, an array of stand-alone and embedded measures of

malingering and effort were administered to Mr. Tabler over the course of the examination.

Measure	**Result**
CVLT-II Forced Choice Trial	Valid
Rey 15 Items	Valid
Reliable Digit Span	Valid
Bolter Index	Valid
VIP Verbal	Valid
VIP Non-Verbal	Inconsistent

Based on his scores across this battery of effort indicators, it can be concluded that he was putting forth a good effort, and that the resulting test scores are valid, and reliable for interpretation.

The only exception was his performance on the non-verbal subtest of the VIP, which was administered at the end of the day, and indicated that his level of effort was inconsistent. He was not engaged in the task or was generally not interested. His response style is characteristic of irrelevant or random responding. His Total Score of 56 (out of 100), which falls in the random range, also strengthens the conclusion that he was probably responding without regard to item content. This finding is consistent with this examiner's observation that he had reached the limit of his tolerance after over five straight hours of testing.

Intellectual functioning. On the Wechsler Adult Intelligence Scale–IV, Mr. Tabler achieved a full-scale IQ score at the very bottom of the Low Average range (80) which falls in the bottom 9 percent nationally. His Verbal Comprehension Index score was 8 points lower than his Perceptual Reasoning Index score, a difference that did not reach statistical significance, but is consistent with the PIQ > VIQ pattern he has exhibited in the past.

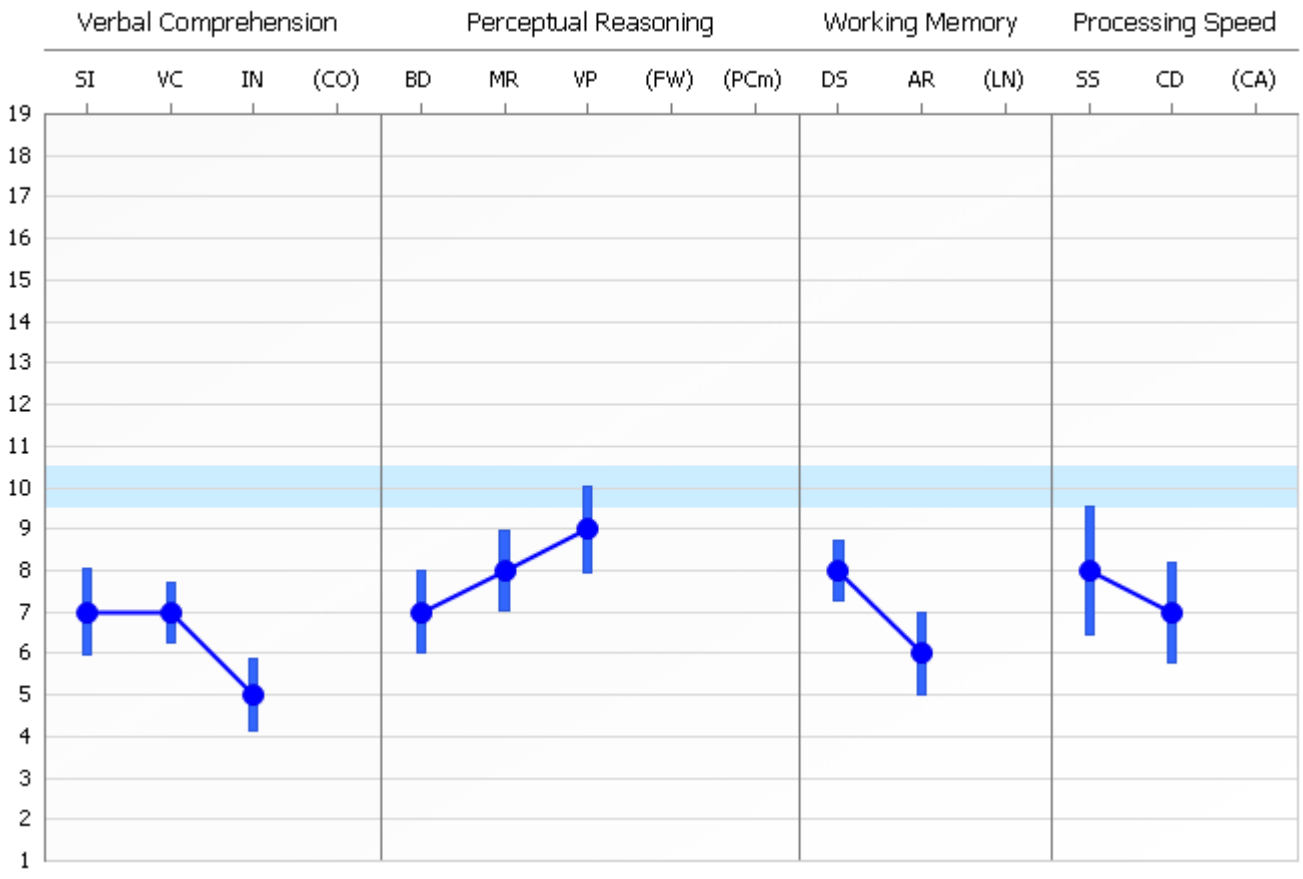
His IQ test scores are summarized in the table below:

WAIS-IV

Scale	Sum of Scaled Scores	Composite Score		Percentile Rank	95% Confidence Interval	Qualitative Description
Verbal Comprehension	19	VCI	80	9	75-86	Low Average
Perceptual Reasoning	24	PRI	88	21	82-95	Low Average
Working Memory	14	WMI	83	13	77-91	Low Average
Processing Speed	15	PSI	86	18	79-96	Low Average
Full Scale	72	FSIQ	80	9	76-84	Low Average
General Ability	43	GAI	81	10	77-87	Low Average

Confidence Intervals are based on the Overall Average SEMs. Values reported in the SEM column are based on the examinee's age.
The GAI is an optional composite summary score that is less sensitive to the influence of working memory and processing speed. Because working memory and processing speed are vital to a comprehensive evaluation of cognitive ability, it should be noted that the GAI does not have the breadth of construct coverage as the FSIQ.

Subtest Scaled Score Profile



The vertical bars represent the standard error of measurement (*SEM*)

The table above shows Mr. Tabler's subscale scores from the WAIS-4, and their associated standard errors of measurement. The light blue line across the table at the scaled score of 10 indicates the mean or "average" score in the normal population.

Academic achievement. Mr. Tabler's academic achievement was evaluated using the Wide Range Achievement Test – IV. His scores are presented in the table below:

Subtest	Grade Equivalent	Percentile
Word Reading	8.1	14
Sentence Comprehension	9.4	13
Spelling	8.9	19
Math	5.1	7
Reading Composite	n/a	10

For a man who completed 10 years of schooling, these scores reflect a broad learning disability across areas, but particularly in math. This is consistent with his academic records and history. His level of academic achievement falls significantly below grade level.

Attention and concentration. Measures of his attention and concentration produced mixed results. He was able to rapidly draw a line "connecting the dots" between numbers displayed on a page (Trails A) within Low Average limits, indicating relatively preserved visual attention.

However, tests of auditory attention, particularly the Seashore Rhythm Test that required him to distinguish whether a series of two rhythms were the same or different, was moderately impaired. On the Speech-Sounds Perception Test, his score was normal.

Language functioning. As noted during the mental status examination, Mr. Tabler has difficulty with articulation and pressured speech. This was apparent throughout the examination, both during interviews and testing.

On the Boston Naming Test, he had significant difficulty naming pictures of common objects, reflecting a fundamental word-finding problem of moderate severity for his age (bottom 5th percentile). This reflects an expressive aphasic deficit.

Memory functioning. Mr. Tabler's memory abilities were tested using both the Wechsler Memory Scale – IV (WMS-4) and the California Verbal Learning Test – II (CVLT-2).

His scores on the WMS-4 are summarized in the table below:

WMS–IV Flexible Approach

WMS–IV Alternate Index Score Summary

Index	Sum of Scaled Scores	Index Score	Percentile Rank	Confidence Interval	*SEM*	Qualitative Description
Immediate Memory (LMVR)	12	77	6	71-87	4.5	Borderline
Delayed Memory (LMVR)	16	88	21	82-95	3.35	Low Average
Auditory Memory (LM)	11	78	7	72-87	3.67	Borderline
Visual Memory (VR)	17	92	30	87-97	2.6	Average

WMS–IV Alternate Indexes derived using Logical Memory and Visual Reproduction (LMVR).
Confidence Intervals reported at the 95% Level of Confidence.

Overall, his memory is functioning at a significantly lower level than his IQ would predict, indicating the presence of impairment for both Immediate Memory and Auditory Memory which fell in the Borderline range of functioning in the bottom 6th and 7th percentiles, respectively.

His auditory memory is operating at a significantly lower level than his visual memory. His Immediate Memory is also operating at a significantly lower level than his Delayed memory, suggesting a short-term attentional deficit.

Mr. Tabler's new verbal learning was tested using the CVLT-2. Although the majority of his scores were within the normal range on this test, he displayed a significant degree of: (1) perseveration (pathological repetition of answers already given); and (2) confabulation (pathological intrusion of answers he was not asked to recall, but mistakenly thought he was). These are hallmark signs of executive dysfunction characterized by a lack of self-monitoring and impulse control.

Frontal lobe/executive functioning. The frontal lobes are the "command and control" center for the brain, and determine how well we plan, organize and direct our behavior, solve problems, and learn from mistakes.

On tests of executive functioning, Mr. Tabler produced mixed results. Tests of verbal fluency, response inhibition, and abstract problem solving were performed within normal limits (i.e., F-A-S, Animal Naming, Halstead Categories, and Stroop Test). However, there was evidence of difficulty sustaining his cognitive momentum during tests of verbal fluency consistent with ADHD.

He fared more poorly on tests requiring cognitive flexibility, including divided attention (multitasking), and "set- switching" (i.e., adapting to changing problem situations). His level of impairment ranged from mild (Trails B); to severe (Wisconsin Card Sort Categories, and Failure to Maintain Set scores).

Visual-perceptual organization. Mr. Tabler's score on the Hooper Visual Organization Test, which measures his ability to mentally manipulate visual puzzles, was moderately impaired (6^{th} percentile). He also had difficulty accurately reproducing a drawing of a cube.

Motor functioning. On tests of pure motor functions, Mr. Tabler produced deficits consistent with past indications of peripheral nerve damage due to his cutting and self-injurious behavior.

This was reflected in mild-to-moderate impairment bilaterally in upper extremity motor speed (finger tapping) and mild left-side impairment in fine motor speed and control (Grooved Pegboard). As noted on mental status examination, he also has a tremor bilaterally in his arms.

Summary of Forensic Opinions

I have reached the following opinions in the case to a reasonable degree of neuropsychological certainty:

1) **Please provide the Court with an opinion regarding any aspects or impairments of Mr. Tabler's neurocognitive functioning;**

Mr. Tabler is a 36 year-old man with a very low average IQ and a constellation of significant neuropsychological deficits, including impairment in the following functional areas:

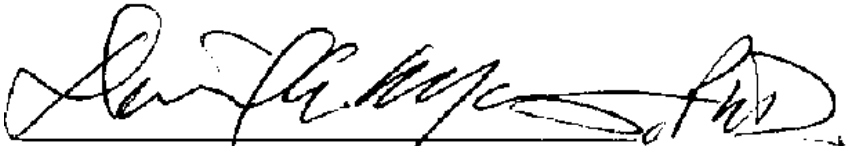
- Auditory Attention;
- Auditory and Immediate Memory;
- Expressive Language;
- Visual-perceptual organization;
- Executive functioning, specific to tasks requiring cognitive flexibility, divided attention, multitasking, and adapting to changing problem situations; and
- Learning Disability.

His strengths include being effortful and honest in his approach to the testing, and preserved abilities in the following areas:

- Visual attention
- Visual and Delayed Memory
- Verbal fluency
- Verbal learning
- Abstract problem solving

Thank you for the opportunity to evaluate this interesting case. If you have any questions, please feel free to contact me directly any time at (949) 230-7321.

Sincerely,



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Background Materials Reviewed
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